

DEPARTMENT OF STATE

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HANDLING INDICATOR

TO : DEPARTMENT OF STATE 102 SEP 7 AM 8 50

LEGAL ADVISER

Reply drafted

SEP 10 1962

9/20/62 4A-Whairis
DEPARTMENT OF STATE

FROM : Amembassy TOKYO

DATE: September 5, 1962

SUBJECT : Consular Convention with Japan

REF : Department's A-49 of July 20, 1962 and A-71 of August 2, 1962

611.9442/7-662

The third series of resumed negotiations between the Embassy and the Ministry of Foreign Affairs on the pending United States-Japan Consular Convention began on August 2, 1962 and ended on August 17, 1962. Three meetings (numbers 15 through 17) were held during this period and Draft Memoranda of Conversation covering each meeting are transmitted herewith as Enclosure No. 1. The substantive content of these memoranda is submitted in a topical format in Enclosure No. 2.

The following discussion encompasses in the order named: (I) remaining areas of difference, (II) new proposals by Japan, and (III) some general comments by the Embassy. Previously unagreed matters not mentioned in Section I below, but which were also included in the discussion provided in the Department's A-71, have been resolved through the adoption by Japan of phraseology desired by the United States.

I. Remaining Areas of Difference

1. Article 3(1) which deals with the establishment and location of consular offices is the subject of a counterproposal by Japan. Japan now desires that the paragraph be left as it was prior to the Japanese proposal for the addition of several words in the

Enclosures:

1. Draft Memoranda of Conversation.
2. Topical Format.

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FORM 4-62 DS-323

Drafted by:

Contents and Classification Approved by:

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CCA:RJBlake

Clearances:

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second sentence and that the following phrase be added at the end of Article 2(8): "a consular officer may be a career officer (consul missus) or an honorary officer (consul electus);" Article 2(8) would then read: "The term 'consular officer' means any individual authorized by the sending state to exercise consular functions who is granted an exequatur or provisional or other authorization by the appropriate authorities of the receiving state; a consular officer may be a career officer (consul missus) or an honorary officer (consul electus);"

The Japanese negotiators indicated that they did not have strong views on this proposal but hoped that the US would accept it as an alternative to the entire elimination of the second sentence of Article 3(1). The Consular Convention between the United Kingdom and Germany signed at Bonn on July 30, 1956 was cited as containing a precedent for the inclusion of the additional language now suggested by the Japanese side.

2. Article 8(3) which deals with the archives of a consular office continues to be at issue. Japan desires that its wording for originally numbered subparagraph (b) be adopted and cites as justification Article 10(1) of the United States-United Kingdom Consular Convention and Article 60 of the International Law Commission's draft Convention on Consular Intercourse and Immunities, both of which contain, in essence, the term "consular officers and employees" instead of "such officer." Again the Japanese negotiators indicated that they did not have strong views on the matter.

3. Article 11(1)(a) in respect of the meaning of "willful misconduct" and "gross negligence" as applied to the jurisdiction of courts of the receiving state over consular employees of the sending state who are nationals of the receiving state has been the subject of additional clarification, which will be found on page 12 of Enclosure No. 1.

4. Article 14(2) which is concerned with the members of a consular officer's household who might be accorded privileges and immunities is the subject of a joint proposal by the US and Japanese negotiators. Before the Embassy received the Department's A-71, it noted that the term "members of his family forming part of his household" included in Article 14(2) also appears in Article 11(5) and in the new Article on Limitations. (Among minor editing changes contemplated by the Japanese side which have not yet been

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communicated to the Department, there is a proposal that the first sentence of Article 11(5) be made to correspond with Article 14(2) and the new Article on Limitations by replacing "his spouse and minor children residing with him" with the term "members of his family forming part of his household".)

In order that the clarification requested by the Department for this term be applicable to all three Articles, it was proposed and agreed that an appropriate definition be drafted ad referendum and be included as an appropriately numbered paragraph of the Protocol. The definition would read: "The term 'members of his family forming part of his household' referred to in Articles 11(5), 14(2) and the new Article on Limitations will be understood to include only those persons residing in the receiving state who are substantially dependent upon the consular officer or employee for support." The Japanese side further proposed in this connection, after the point was raised by the United States, that the second sentence of Article 11(5) be revised to read as follows: "Such members of the family of a consular officer or employee shall not receive the benefits of this paragraph if gainfully employed in the receiving state." Both sides took cognizance of the fact that when the various Articles are renumbered, the reference to the new Article on Limitations in the above definition will be changed to the appropriate Article number.

5. Article 17(1)(e) deals with the taking of evidence by consular officers and is the subject of a further proposal by Japan. For purposes of record, and with specific pertinence to the statement on page 3 of A-71, the basic provisions of the Japanese proposal currently under consideration in respect of the Agreed Official Minutes concerning Article 17(1)(e) appear on pages 3 and 4 of Enclosure No. 1 to the Embassy's Despatch 284 of September 25, 1961 and not in Enclosure No. 4 of Despatch 185.

The Japanese side desires to substitute the word "depositions" for the word "evidence" in subparagraph 17(1)(e)(ii). The Japanese negotiators observed that if their proposal were accepted, there would no longer be a need for the first sentence of the Agreed Official Minute to Article 17(1)(e). They also indicated that they would have no objection to the elimination of item (b) in the second sentence of the Official Minute referring to United States commissioners.

Further

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Further clarification of the need for this AOM as requested by the Department will be found on pages 11 and 12 of Enclosure No. 1.

6. The second paragraph of the Protocol which deals with the question of Japanese consuls providing consular services for Ryukyans in the United States is the subject of a new counterproposal by Japan, which, however, is in substantial accord with the viewpoints set forth in the Department's A-49. The Japanese side desires that the paragraph read: "Notwithstanding the provisions of paragraph (3) of Article 2, an individual whose place of family registration is in the Ryukyu Islands shall, for the purposes of this convention and for so long as his place of family registration has not been transferred to Japanese jurisdiction, be considered a national of Japan when in Japan and a person under the protection of the United States when in the United States of America, its territories or possessions." The abandonment of the previous Japanese position that this paragraph of the Protocol cover all areas mentioned in Article 3 of the Treaty of Peace with Japan is explained in the discussions of the 16th negotiating session held on August 13, 1962.

The Japanese side has also proposed that the following informal exchange of correspondence take place between the Counselor of Embassy for Consular Affairs and the Director of the Treaties Bureau of the Ministry of Foreign Affairs in order primarily to provide a record separate from that of the negotiating history of the Consular Convention of the relationship that the United States is prepared to recognize between Japanese consular officers and Ryukyans in the United States whose place of family registration has not been transferred to Japanese jurisdiction. The proposed exchange of correspondence would also make of record a corresponding relationship between United States consular officers and Ryukyans in Japan, as follows:

To the Counselor of Embassy:

"I wish to make the following communication to you in order to place on record the understanding reached between the Government of Japan and the Government of the United States regarding the application of paragraph 2 of the Protocol attached to the Consular Convention between Japan and the United States of America which will be signed on /date to be inserted would shortly precede date of signing of Convention/.

"Those

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"Those Ryukyans whose place of family registration has not been transferred to Japanese jurisdiction would be free to consult Japanese consular officers when in the United States and United States consular officers when in Japan, and Japanese consular officers in the United States or United States consular officers in Japan have the right to perform services for such Ryukyans when such services are related to passports or to such matters as the execution of documents intended to have legal effect in the sending state and entitlement to relief and benefits receivable from the sending state.

"I shall be much obliged if you could confirm that the contents of the preceding paragraph are also the understanding of the Government of the United States."

To the Director of the Treaties Bureau:

"I acknowledge receipt of your letter of today's date regarding the application of paragraph 2 of the Protocol attached to the Consular Convention. The second paragraph of your letter reads as follows:

'Those Ryukyans whose place of family registration has not been transferred to Japanese jurisdiction would be free to consult Japanese consular officers when in the United States and United States consular officers when in Japan, and Japanese consular officers in the United States or United States consular officers in Japan have the right to perform services for such Ryukyans when such services are related to passports or to such matters as the execution of documents intended to have legal effect in the sending state and entitlement to relief and benefits receivable from the sending state.'

"I wish to inform you that the contents of the quoted paragraph of your letter are also the understanding of the Government of the United States."

II. New Proposals by Japan

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II. New Proposals by Japan

While again making certain further new proposals regarding matters on which agreement by both sides had previously been reached, the Japanese side has explained that adoption thereof would in its view contribute to greater clarity even though it does not intend to insist upon their inclusion in the text of the Convention as finally approved. These new Japanese proposals are enumerated immediately below; none of the proposals appears to be inimical to the United States interest and all represent safeguards that are desirable in varying degree. Moreover, their acceptance by the United States at this relatively late date would be tactically useful in affording future negotiating leverage if, as indicated by the last paragraph of the Department's A-71, further changes to the draft must be proposed by the United States side as a prerequisite not only to over-all Executive Branch clearance but to the more limited clearance by the Department itself (the latter of which the Japanese side has assumed is already implicit). The new Japanese proposals follow:

1. Article 5(2) which deals with the special protection of a consular officer of the sending state by the receiving state, is the subject of a new proposal by Japan. Japan desires that the following sentence be added at the end of the paragraph: "A consular office shall also be entitled to special protection by the receiving state." Japan's explanation for wanting this additional sentence will be found on page nine of Enclosure No. 1.

2. Article 6(1) which is concerned with the temporary assignment of an officer to take charge of a consulate is also the subject of a new proposal. Japan proposes that the first sentence of this paragraph be amended as follows: "A consular officer or employee may be assigned temporarily in an acting capacity to perform duties of a consular officer in charge who has died or is unable to act through illness, absence or other cause. Japan's explanation for this new proposal will be found on page nine of Enclosure No. 1.

3. Japan desires that a new subparagraph be added to Article 17(1) to become subparagraph (g) and to read: "issue, with regard to goods, certificates of origin and other necessary documents for use in the sending state."

4. Japan desires that the wording of paragraph 4 of the Protocol be changed so that the words "be deemed to refer to" in the preamble of this

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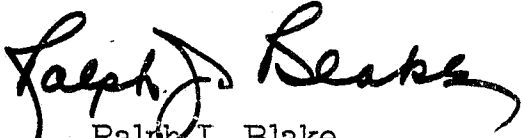
paragraph be replaced by the words "be deemed to include". Japan's explanation for desiring this change will be found on page nine of Enclosure No. 1.

III. Comment

The Embassy and the Foreign Office have begun preparing an agreed-upon English text of the Convention. As the Department will note on page 13 of Enclosure No. 1, Japan will be unable to comply with the Department's request for submission of the official Japanese language text of the Convention along with the agreed-upon English language text, since the former will not receive final executive clearance within the Japanese Government until similar United States clearance is forthcoming and there is no prospect of possible further amendment short of the legislative level.

A list of minor editing changes considered necessary by both sides is also being compiled and will be completed for submission to the Department following the receipt of the reply to this airgram.

For the Ambassador:


Ralph J. Blake
Counselor for Consular Affairs

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Japanese delegation:

Chief, Legal Section, Treaties Bureau
Secretary, Legal Section
Secretary, North American Section,
American Affairs Bureau

Counselor of Embassy
Second Secretary of Embassy

US: The United States cannot accept the concept advanced by Japan that Japanese consuls in the United States should be granted the right to represent Ryukyans in the US. The US considers Ryukyans to be persons under the protection of the US by virtue of its position as administering authority of the Ryukyu Islands. It would be undesirable for the United States to abdicate its protective responsibility while Ryukyans are in the US. Practically speaking, in the rare cases where Ryukyans have become involved in difficulties in the US, the Department of the Army, as administering authority for the Ryukyus, has been helpful in assisting these Ryukyans by approaching on their behalf the local authorities concerned.

The US notes that the Consular Convention as presently drafted would permit American consular officers to represent and protect Ryukyuans in Japan since they are "persons under the protection of the United States." The US would be willing to eliminate this right in return for a similar elimination of Japanese rights to protect Ryukyus in the United States. To solve this problem, the US would like to present a counterproposal for consideration by the Japanese side.

[At this point there was handed to the Japanese delegation the American counterproposal for Protocol 2 reading as follows:

"An individual whose place of family registration is in one of the areas set forth in Article 3 of the Treaty of Peace with Japan, signed at the City of San Francisco on September 8, 1951, shall, for so long as his place of family registration has not been transferred to Japanese jurisdiction, be considered a national of Japan when in Japan and a person under the protection of the United States when in the United States of America, its territories, or possessions." 7

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It should be noted that this definition of "Ryukyuan", as well as the definition of the status of Ryukyuans in the United States and Japan, is being proposed for the purposes of the Consular Convention only.

Japan: Would you have any objections to prefacing your proposal with the words "For the purpose of this Convention"?

Japan: Do you believe that there would be objections to the inclusion of an Agreed Official Minute to cover the explanation given by the US side on its proposal regarding the status of Ryukyus?

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US: The inclusion of an Agreed Official Minute for this purpose would present difficulties to the US side, a principal one being the need for Senate ratification of the Agreed Official Minute along with the Consular Convention itself. You will recall that in our earlier meetings both sides reached agreement to eliminate Agreed Official Minutes from the Consular Convention.

Japan: Would a Ryukyuan in the US with a Japanese passport and no Ryukyuan Certificate of Identity be considered a person under the protection of the United States?

US: According to the Department's proposal, if the Ryukyuan in question had his place of family registration in a United States administered area of the Ryukyus he would be considered under the protection of the United States.

Japan: What is the difference between a possession and a territory? Could you give us some examples?

US: American Samoa and Guam are possessions and Hawaii and Alaska before they became States were political subdivisions designated as Territories. The term possession connotes less political autonomy than does the term territory. Possessions and territories would be included in the general term "areas" as used in the Department's proposal. You will also note that Article 1 of the proposed Consular Convention defines territories to which the Convention applies as comprising all areas of land and water subject to the sovereignty or authority of either High Contracting Party. It does not appear to us that use of the term "territories or possessions", which is frequently found in US official documents, would interpose obstacles in the interpretation and application of the Convention in specific cases.

Japan: We will give your new proposal our urgent consideration.

US: We also wish to inform you that the Department is giving urgent attention to the remaining points at issue in the Convention and that we have asked the Department for instructions on these points to be received by the Embassy, if possible, by the end of August as the Japanese side has proposed.

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Formal Resumption of US-Japan Consular Convention Negotiations
16th Meeting, August 13, 1962, Foreign Ministry, 3:00 P.M.

Japanese delegation:

Mr. Motoo Ogiso
Mr. Mitsuro Donowaki
Mr. Toshitake Katayama
Mr. Tatsuo Arima

Mr. Kumao Kaneko

Chief, Legal Section, Treaties Bureau
Secretary, Legal Section
Secretary, Protocol Section
Secretary, North American Section,
American Affairs Bureau
Secretary, Legal Section

U.S. Delegation:

Mr. Ralph J. Blake
Mr. Harrison M. Holland

Counselor of Embassy
Second Secretary of Embassy

Proceedings:

US: With respect to your question regarding the application of Article 1 to the United States Pacific Trust Territories, we wish to inform you that the United States interprets this Article to include US Pacific Trust Territories, since these are areas subject to the present authority and jurisdiction of the US.

With respect to Article 3(1) the Department believes that Japan's desire to expand the second sentence of this subparagraph would encumber the Convention with unnecessary detail, merely to implement the domestic legislation of Japan. It will be noted that Article 1(a) of the present draft of the International Law Commission's Consular Convention merely defines a consulate to be a consulate-general, a consulate, a vice-consulate, or a consular agency. Moreover, the Department's short form draft provides no definition of the types of consular establishments at all. To alleviate the problems of definition, we wish to propose the deletion of the entire second sentence. As any disagreement with respect to nomenclature of the consular establishment by the receiving state would very likely be expressed when the agreement in the first sentence of Article 3(1) is sought, there would appear to be no real purpose served by the retention of the second sentence.

Japan: We will have a counterproposal for Article 3(1) later in the meeting.

US: With respect to Article 8(3), the proposal to interchange paragraphs 3(a) and 3(b) has been accepted by the Department.

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With respect to the Japanese proposal to substitute the phrase "consular officers and employees" for the term "such officer" in Article 8 (3)(b), the Department has explained that the words "such officer" were used to forestall the mixing of private and business papers of the consular officer who was also engaged in private occupation for gain in the receiving state--for example, the honorary consul situation. Since consular employees would hardly fit this category they were not specified in this Article.

Japan: Paragraphs 1 and 2 of Article 8 refer to a "consular officer in charge" as well as "consular officer". Would the term "such officer" apply to both categories of officers?

US: "Such officer" refers only to "consular officer in charge", who, if also engaged in private occupation for gain, would be the sole consular officer at the post.

Japan: Are consular employees prohibited from keeping private papers in offices where a career consular officer is in charge?

US: Yes. Consular employees are not expected to have private employment while assigned to a consular office or, at least, to retain private papers of any nature within the consular premises.

Japan: We will study the matter further.

US: With respect to Article 9(4), the US accepts the Japanese proposal.

With respect to Article 11(1)(a), the US believes that the substance of the proposed new sentence to be added to the US draft of the subparagraph would be the best compromise possible. Because of the unsure connotation of the word "crimes" in US jurisprudence, however, it is proposed to substitute the word "acts" for the word "crimes". The Department continues to desire further clarification of the meaning of the words "willful misconduct" and "gross negligence".

Japan: We will attempt to provide some clarification at a later time.

US: Japan's proposal to include the Agreed Official Minute to Article 11(1)(a) in the body of this subparagraph is acceptable to the US. [At this point the US and Japanese negotiators discussed at what place the AOM could most properly be inserted into the subparagraph.]

Japan: We would recommend that the AOM be inserted between the words "sending state" and "be subject to the jurisdiction...." so that Article 11(1)(a) would then read "A consular officer or employee shall not, except with the consent of the sending state notified to the receiving state in writing through diplomatic channels, be subject to the jurisdiction of the courts of the receiving state in respect of acts performed in his official capacity and falling within the functions of a consular officer under this Convention. However, the courts of the receiving state shall not be precluded from exercising jurisdiction over a consular employee who is a national of the receiving state in respect of acts committed through willful misconduct or gross negligence."

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US: This appears to be a logical way of resolving the issue.

With respect to Article 13(2)(a), the US accepts the Japanese proposal.

With respect to Article 14(2), the Department is willing to accept the Japanese version of this Article subject to the inclusion of a clarifying sentence in the Article pertaining to the definition of the term "forming part of his household". The US desires that such clarification embody the thought expressed by Japan in the Ninth Meeting to the effect that "the Japanese draft would permit a daughter or son not residing with the parents, but elsewhere in the receiving state (such as in a boarding school) and supported by them, to receive the benefits of this Article but would withhold such benefits from a son or a daughter, as well as a parent, residing with the consular officer but working and receiving a salary substantially sufficient for self support."

Since our last meeting we have been studying this problem and find that reference to members of the family of a consular officer "forming part of his household" appears not only in Article 14(2) but also in the new Article on Limitations. It would furthermore be included in Article 11(5) if the recent Japanese proposal of an editing change in this sense is adopted. Therefore, since it has been proposed that this phrase appear in three different places in the Convention, and since the Department has indicated its agreement thereto in principle, in respect of Article 14(2), it would seem logical to us to place the suggested clarification either in Article 2 or in a new Protocol.

Japan: We agree in principle to your proposal and would suggest that an ad hoc committee (Messrs. Donowaki and Holland) draft an appropriate clarification for this purpose to be given ad referendum consideration at a later meeting of the full working groups.

US: We agree.

Japan: We have noted that you made no reply to our proposal to substitute the term "the hotel and restaurant tax" for the "amusement tax" in Article 13 (3)(d).

US: Because there appears to be no change of substance here, and since the tax in question is essentially the same as that previously agreed to and merely has a new name, we believe the Department will accept this proposal.

With respect to Article 16(1), the US agrees to Japan's proposal.

With respect to the Agreed Official Minute to Article 17(1)(e), the US desires further clarification as to the need for this AOM and also a further

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explanation of the reason for the change of "material" to "real" evidence.

Japan: We will attempt to meet your request at a later date. However, we have some preliminary thoughts which may be helpful. It has always been the intention of the Ministry of Justice to limit the evidence to be taken by consular officers to oral or written statements. Accordingly, if we use the term "take depositions" instead of "take evidence", the first part of the AOM may no longer be necessary. We may make a new proposal along this line.

US: With respect to Article 23(2), the US agrees to the substance of the proposed new Japanese paragraph but for reasons of internal consistency and drafting, the Department would propose the following language in lieu of the Japanese paragraph:

"The provisions of the preceding paragraph shall not be construed as affecting the rights of vessels in innocent passage through the territorial sea. Such rights are determined by international law."

Japan: We accept the US proposal.

US: With respect to Protocol 3, the US would prefer to have reference made to Article 13(1) in the new Article on Limitations, with the subsequent deletion of Protocol 3.

Japan: If such a reference were made to Article 13(1) in the new Article on Limitations, would a consular officer or employee who is a dual national of Japan and the US be included?

US: Yes.

Japan: We would then have no objection to the proposal.

US: With respect to the disposition of AOMs, and with the two following exceptions, the incorporation of the AOMs into the body of the Convention is approved. With respect to the AOM to Articles 14 and 17, as incorporated into Article 14(3), the US believes it desirable to frame this AOM in the terminology of Article 3, viz., "consular offices" instead of "consulates". It is therefore suggested that the wording "consulate's importation" be changed to "importation by consular offices".

Japan: We are agreeable to this proposal.

US: The inclusion of the Agreed Official Minute to Article 17(1)(e) is contingent upon the clarification requested above.

Japan: We have a counterproposal to present for Protocol 2. We desire the Protocol to read as follows: "Notwithstanding the provisions of paragraph 3 of Article 2, an individual whose place of family registration is in the Ryukyu Islands shall, for the purpose of this Convention and for so long as his place

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of family registration has not been transferred to Japanese jurisdiction, be considered a national of Japan when in Japan and a person under the protection of the United States when in the United States of America, its territories and possessions."

US: We recall that you earlier took the position that to facilitate Diet ratification of the Convention you required that Protocol 2 apply to all areas covered by Article 3 of the Treaty of Peace with Japan and we so informed the Department.

Japan: We are, of course, aware of this fact but further study of Protocol 2 revealed that certain difficulties would be encountered in explaining the registration status of people living in Ogasawara if our earlier draft were accepted. Whereas the family registration records of persons living in Ogasawara are kept in Tokyo, the place of registration noted on the records still remains as Ogasawara and as a result we feared that misunderstandings might develop in the future. We therefore concluded that it would be preferable to have the territorial application of Protocol 2 limited only to the Ryukyu Islands. We have prepared in draft an exchange of letters [copies of which were handed to the US side] between Mr. Ralph J. Blake, Counselor of the American Embassy, and Mr. Toru Nakagawa, Director of the Treaties Bureau, Ministry of Foreign Affairs, which records the explanation of the US position with respect to Protocol 2 given by Mr. Blake at the 15th Meeting on August 2, 1962. Although the official history of the Convention will reflect this explanation, there might be instances in which we would not desire to disclose the entire record of the Convention to the Diet. We furthermore do not intend to volunteer the disclosure of the exchange of letters unless this were to prove helpful in connection with the ratification process. The date appearing on these letters would be one shortly prior to the date of the signing of the Convention.

US: We will present your counterproposal and the draft exchange of letters to the Department.

Japan: As mentioned earlier in this meeting, we have a counterproposal for Article 3(1). Japan proposes that the second sentence of Article 3(1) be left as it was prior to Japan's proposal for the addition of several words. Japan further proposes that the following phrase be added at the end of Article 2(8): "a consular officer may be a career officer (consul missus) or an honorary officer (consul electus);". Article 2(8) would then read "The term 'consular officer' means any individual authorized by the sending state to exercise consular functions who is granted an exequatur or provisional or other authorization by the appropriate authorities of the receiving state; a consular officer may be a career officer (consul missus) or an honorary officer (consul electus);". We have no strong views on the point but would prefer this change to the entire elimination of the second sentence of Article 3(1).

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We also have several new proposals to make. Because these negotiations have been prolonged and as we have been reviewing each Article of the Convention for currency, it appears to us that certain changes seem desirable although we would not insist on these new proposals.

Our first new proposal deals with Article 5(2). Japan desires that the following sentence be added at the end of this paragraph: "A consular office shall also be entitled to special protection by the receiving state." We believe that it is understood as a matter of practice that offices as well as officers are entitled to special protection. However, it occurred to us that if a consular officer is absent from the consular office, the office itself might not be entitled to special protection under the present wording of the Convention as we interpret it. We therefore feel that this proposal should be included in the agreed text.

US: Are there any precedents for the use of such language?

Japan: Recent conventions that the United Kingdom concluded with Austria, Belgium and Spain seem to have such provisions. The British have made such a proposal to us with respect to the British-Japan Consular Convention presently being negotiated and we consider it a worthwhile proposal.

Our next proposal concerns Article 6(1) and we suggest that the first sentence of this paragraph be amended to read as follows: "A consular officer or employee may be assigned temporarily in an acting capacity to perform duties of a consular officer in charge who has died or is unable to act through illness, absence or other cause." We consider that appointment of an acting officer would be necessary only in the case of death or absence of a head of the post and not in the case of death or absence of subordinate consular officers.

Our third proposal deals with the addition of a new subparagraph to Article 17(1) to become 17(1)(g) and to read as follows: "issue, with regard to goods, certificates of origin and other necessary documents for use in the sending state." While we do not have strong feelings about this proposal we believe its adoption would serve the interests of clarity.

Our fourth new proposal deals with Protocol 4. Japan proposes that the words "be deemed to refer to" in the preamble of this paragraph be replaced by the words "be deemed to include". If the present wording were allowed to stand it might be interpreted that the word "vessel" referred to in Articles 21(1), 22(1), 22(2), 22(3), 22(5), 23(1), and 23(3) applies only to such a vessel as is covered by Protocol 4(a) and (b) when in fact the original intention of this Protocol was that the term "vessel" have a broader meaning.

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Formal Resumption of US-Japan Consular Convention Negotiations
17th Meeting, August 17, 1962, Foreign Ministry, 3:00 P.M.

Japanese delegation:

Mr. Motoo Ogiso	Chief, Legal Section, Treaties Bureau
Mr. Mitsuro Donowaki	Secretary, Legal Section
Mr. Tatsuo Arima	Secretary, North American Section, American Affairs Bureau
Mr. Kumao Kaneko	Secretary, Legal Section

United States delegation:

Mr. Ralph J. Blake	Counselor of Embassy
Mr. Harrison M. Holland	Second Secretary of Embassy

Proceedings:

US: We wish to confirm the fact that the United States counterproposal for the second paragraph of the Protocol discussed at the 16th and 17th Meetings is a substitution for the entire second paragraph of the previous Japanese draft proposal.

Japan: We understand this.

With respect to the definition of the term "members of his family forming part of his household" as drafted by Messrs. Donowaki and Holland, we propose that the following phraseology be adopted: "The term 'members of his family forming part of his household' referred to in Articles 11(5), 14(2) and the new Article on Limitations will be understood to include only those persons residing in the receiving state who are substantially dependent upon the consular officer or employee for support." We further believe that this definition should be an appropriately numbered paragraph in the Protocol rather than be included in Article 2 of the Convention. Definitions appearing in the latter are Convention-wide in scope whereas definitions in the Protocol refer to specific articles in the Convention.

US: We will transmit this proposal to the Department. It would appear to us that this proposed new paragraph of the Protocol would make unnecessary the second sentence in Article 11(5).

Japan: Under Japanese immigration laws, foreigners who work have a special immigration status and are subject to the Alien Registration Law. In view of this new proposal, we would suggest that the second sentence of Article 11(5)

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be revised to read as follows: "Such members of the family of a consular officer or employee shall not receive the benefits of this paragraph if gainfully employed in the receiving state."

US: We wish to point out that in the proposed new paragraph of the Protocol, the reference to the new Article on Limitations will eventually have to be changed to cite the appropriate number for this Article.

Japan: Yes, that is correct.

In Article 17(1)(e)(ii), we wish to substitute the term "depositions" for "evidence". The subparagraph would then read "take depositions, on behalf of the courts of the sending state, voluntarily given by, or".

US: We wish to point out that this proposal would narrow the scope of the subparagraph, since "depositions" is a less inclusive term than "evidence", and we are uncertain at this time whether it would meet the needs of the United States. We will, of course, submit your proposal to the Department.

Japan: If the United States accepts this proposal, the first sentence of the Agreed Official Minute to Article 17(1)(e) could be deleted, as well as the word "also" near the beginning of the second sentence. As to the justification for the remainder of the text in this AOM, we should like to present the following explanation. The Japanese side takes due note of the assurance given by the U.S. side at the meeting held on August 2, 1961, to the effect that the term "courts of the sending state" used in paragraph (1)(e)(ii) of Article 17 may include, with respect to Japan, judges who act in accordance with Articles 179 and 226 of the Japanese Code of Criminal Procedure. If one is to apply this provision according to letters of the text alone, doubts may arise whether a consular officer is permitted to take depositions on behalf of judges (although under limited circumstances) of the sending state. Performance of consular functions of this kind (i.e., taking depositions on behalf of the courts of the sending state) relates to extraterritorial exercise of jurisdiction by the sending state, and, accordingly, it is desirable to eliminate uncertainties by way of recording an understanding reached by both sides in the Protocol of the Convention, rather than in the history of discussion of the Convention.

The Japanese Government intends to introduce, upon entry into force of the Consular Convention, a bill amending the Code of Criminal Procedure in order to implement some of the provisions of the Convention. Accordingly, the provisions proposed by Japan will be of practical value for legislative purposes.

A judge who acts under the provisions of Articles 179 and 226 of the Code of Criminal Procedure of Japan has the same power as a court only

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prior to the commencement of official court proceedings, but he does not represent a court per se.

Of course, if the United States desires the deletion of subparagraph (b) of this AOM, we would have no objections.

We desire at this time to respond to the United States' counter-proposal with respect to Article 8(3)(b). In its proposal, the United States wished to substitute the term "such officer" for the term "consular officers and employees." We would prefer that our wording be retained because it is used in Article 10(1) of the US/UK Consular Convention and is also included in Article 60 of the International Law Commission's draft Convention on Consular Intercourse and Immunities. We do not have strong views on this point but would hope that the United States could accept our proposal.

You also requested in the 16th meeting held on August 13, 1962, that we further clarify the terms "willful misconduct" and "gross negligence" as used in Article 11(1)(a). The following is our explanation:

"Japan's main concern for reserving the right to exercise jurisdiction over its nationals with respect to their acts committed through willful misconduct or gross negligence (in the course of performing official functions) is to prevent hit-and-run drivers employed at foreign consulates from being held immune. Very few crimes or offenses other than violations of traffic regulations would actually fall under the category of acts provided for in the additional sentence of Article 11(1)(a). However, the following hypothetical case may be regarded as another example of an act committed through willful misconduct or gross negligence: -

"A Japanese national is employed at a consulate in Japan as a guard to check visitors from outside. While on duty as a night watchman, he finds a thief trying to break into the compound of the consulate. At the sight of the guard, the thief runs away. The guard fires at the thief from behind with a revolver and kills or injures him. Even though the guard may have been acting in his official capacity, it is common knowledge here that such an act on the part of the guard, in the absence of imminent danger, constitutes excessive self-defense and, hence, has to be regarded as an act committed through willful misconduct. A Japanese court should not be prevented from exercising its jurisdiction over the guard in a case such as this. (Further, it should be added that possession or use of a revolver by a civilian is prohibited by law in Japan.)"

We are agreeable to the substitution of the word "acts" for "crimes" in Article 11(1)(a).

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US: We have been instructed to inform you that the United States in concert with Japan desires to prepare an agreed-upon draft, appropriately renumbered to take account of the many changes previously made in order that the United States Government can obtain the necessary clearances for the Convention throughout the Executive Branch. The United States would also like to request that the official Japanese language text proposed by the Foreign Office be submitted along with the agreed-upon English text. [At this point, the Japanese negotiators explained that the official Japanese language text had to be reviewed in the Legislative Reference Section of the Prime Minister's Office for conformity with Japanese laws and legal terminology before being cleared for submission to the United States Government. It would therefore be difficult to comply with the US request for the transmission at the same time of an agreed-upon text in both languages, especially since the English language text would still have to pass through the Executive Branch of the US Government for necessary clearances.]

In the interests of expediting completion of the Convention and in view of the fact that relatively few issues remain unresolved, the US side proposes that work begin immediately on preparing an agreed-upon draft.

Japan: We agree to your proposal and would further note that the only Articles and paragraphs in the Protocol upon which agreement is still pending include: Articles 3(1), 8(3), 17(1)(e), a new paragraph in the Protocol to cover Articles 11(5), 14(2) and the new Article on Limitations, paragraph 2 of the Protocol, and our new proposals for Articles 5(2), 6(1), 17(1)(g) and paragraph 4 of the Protocol.

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United States-Japan Consular Convention Negotiations
August 2, 1962 to August 17, 1962

Article 1

(Sixteenth Meeting)

✓ US: With respect to your question regarding the application of Article 1 to the United States Pacific Trust Territories, we wish to inform you that the United States interprets this Article to include US Pacific Trust Territories, since these are areas subject to the present authority and jurisdiction of the US.

Article 2(8) and Article 3(1)

(Sixteenth Meeting)

US: With respect to Article 3(1) the Department believes that Japan desire to expand the second sentence of this subparagraph would encumber the Convention with unnecessary detail, merely to implement the domestic legislation of Japan. It will be noted that Article 1(a) of the present draft of the International Law Commission's Consular Convention merely defines a consulate to be a consulate-general, a consulate, a vice-consulate, or a consular agency. Moreover, the Department's short form draft provides no definition of the types of consular establishments at all. To alleviate the problems of definition, we wish to propose the deletion of the entire second sentence. As any disagreement with respect to nomenclature of the consular establishment by the receiving state would very likely be expressed when the agreement in the first sentence of Article 3(1) is sought, there would appear to be no real purpose served by the retention of the second sentence.

Japan: We will have a counterproposal for Article 3(1) later in the meeting.

Ok As mentioned earlier in this meeting, we have a counterproposal for Article 3(1). Japan proposes that the second sentence of Article 3(1) be left as it was prior to Japan's proposal for the addition of several words. Japan further proposes that the following phrase be added at the end of Article 2(8): "a consular officer may be a career officer (consul missus) or an honorary officer (consul electus);". Article 2(8) would then read "The term 'consular officer' means any individual authorized by the sending state to exercise consular functions who is granted an exequatur or provisional or other authorization by the appropriate authorities of the receiving state; a consular officer may be a career officer (consul missus) or an honorary officer (consul electus);". We have no strong views on the point but would prefer this change to the entire elimination of the second sentence of Article 3(1).

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Article 5(2) - New Japanese Proposal

(Sixteenth Meeting)

Japan: Our first new proposal deals with Article 5(2). Japan desires that the following sentence be added at the end of this paragraph: "A consular office shall also be entitled to special protection by the receiving state." We believe that it is understood as a matter of practice that offices as well as officers are entitled to special protection. However, it occurred to us that if a consular officer is absent from the consular office, the office itself might not be entitled to special protection under the present wording of the Convention as we interpret it. We therefore feel that this proposal should be included in the agreed text.

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US: Are there any precedents for the use of such language?

Japan: Recent conventions that the United Kingdom concluded with Austria, Belgium and Spain seem to have such provisions. The British have made such a proposal to us with respect to the British-Japan Consular Convention presently being negotiated and we consider it a worthwhile proposal.

Article 6(1) - New Japanese Proposal

(Sixteenth Meeting)

Japan: Our next proposal concerns Article 6(1) and we suggest that the first sentence of this paragraph be amended to read as follows: "A consular officer or employee may be assigned temporarily in an acting capacity to perform duties of a consular officer in charge who has died or is unable to act through illness, absence or other cause." We consider that appointment of an acting officer would be necessary only in the case of death or absence of a head of the post and not in the case of death or absence of subordinate consular officers.

appears to be a
provision, Article?

Article 8(3)

(Sixteenth Meeting)

US: With respect to Article 8(3), the proposal to interchange paragraphs 3(a) and 3(b) has been accepted by the Department.

With respect to the Japanese proposal to substitute the phrase "consular officers and employees" for the term "such officer" in Article 8(3)(b),

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the Department has explained that the words "such officer" were used to forestall the mixing of private and business papers of the consular officer who was also engaged in private occupation for gain in the receiving state--for example, the honorary consul situation. Since consular employees would hardly fit this category they were not specified in this Article.

Japan: Paragraphs 1 and 2 of Article 8 refer to a "consular officer in charge" as well as "consular officer". Would the term "such officer" apply to both categories of officers?

US: "Such officer" refers only to "consular officer in charge", who, if also engaged in private occupation for gain, would be the sole consular officer at the post. ??

Japan: Are consular employees prohibited from keeping private papers in offices where a career consular officer is in charge?

US: Yes. Consular employees are not expected to have private employment while assigned to a consular office or, at least, to retain private papers of any nature within the consular premises.

Japan: We will study the matter further.

(Seventeenth Meeting)

Japan: We desire at this time to respond to the United States' counter-proposal with respect to Article 8(3)(b). In its proposal, the United States wished to substitute the term "such officer" for the term "consular officers and employees." We would prefer that our wording be retained because it is used in Article 10(1) of the US/UK Consular Convention and is also included in Article 60 of the International Law Commission's draft Convention on Consular Intercourse and Immunities. We do not have strong views on this point but would hope that the United States could accept our proposal.

Article 9(4)

(Sixteenth Meeting)

US: With respect to Article 9(4), the US accepts the Japanese proposal.

Article 11(1)(a)

(Sixteenth Meeting)

US: With respect to Article 11(1)(a), the US believes that the substance of the proposed new sentence to be added to the US draft of the subparagraph

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would be the best compromise possible. Because of the unsure connotation of the word "crimes" in US jurisprudence, however, it is proposed to substitute the word "acts" for the word "crimes". The Department continues to desire further clarification of the meaning of the words "willful misconduct" and "gross negligence".

Japan: We will attempt to provide some clarification at a later time.

(Seventeenth Meeting)

Japan: You also requested in the 16th meeting held on August 13, 1962, that we further clarify the terms "willful misconduct" and "gross negligence" as used in Article 11(1)(a). The following is our explanation:

"Japan's main concern for reserving the right to exercise jurisdiction over its nationals with respect to their acts committed through willful misconduct or gross negligence (in the course of performing official functions) is to prevent hit-and-run drivers employed at foreign consulates from being held immune. Very few crimes or offenses other than violations of traffic regulations would actually fall under the category of acts provided for in the additional sentence of Article 11(1)(a). However, the following hypothetical case may be regarded as another example of an act committed through willful misconduct or gross negligence:

"A Japanese national is employed at a consulate in Japan as a guard to check visitors from outside. While on duty as a night watchman, he finds a thief trying to break into the compound of the consulate. At the sight of the guard, the thief runs away. The guard fires at the thief from behind with a revolver and kills or injures him. Even though the guard may have been acting in his official capacity, it is common knowledge here that such an act on the part of the guard, in the absence of imminent danger, constitutes excessive self-defense and, hence, has to be regarded as an act committed through willful misconduct. A Japanese court should not be prevented from exercising its jurisdiction over the guard in a case such as this. (Further, it should be added that possession or use of a revolver by a civilian is prohibited by law in Japan.)"

We are agreeable to the substitution of the word "acts" for "crimes" in Article 11(1)(a).

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Article 11(5)

[See discussion under Article 11(2) below.]

AOM to Article 11(1)(a)

(Sixteenth Meeting)

US: Japan's proposal to include the Agreed Official Minute to Article 11(1)(a) in the body of this subparagraph is acceptable to the US. [At this point the US and Japanese negotiators discussed at what place the AOM could most properly be inserted into the subparagraph.]

Japan: We would recommend that the AOM be inserted between the words "sending state" and "be subject to the jurisdiction...." so that Article 11(1)(a) would then read: "A consular officer or employee shall not, except with the consent of the sending state notified to the receiving state in writing through diplomatic channels, be subject to the jurisdiction of the courts of the receiving state in respect of acts performed in his official capacity and falling within the functions of a consular officer under this Convention. However, the courts of the receiving state shall not be precluded from exercising jurisdiction over a consular employee who is a national of the receiving state in respect of acts committed through willful misconduct or gross negligence."

US: This appears to be a logical way of resolving the issue.

Article 13(2)(a)

(Sixteenth Meeting)

US: With respect to Article 13(2)(a), the US accepts the Japanese proposal.

Article 13(3)(d)

(Sixteenth Meeting)

Japan: We have noted that you made no reply to our proposal to substitute the term "the hotel and restaurant tax" for "the amusement tax" in Article 13(3)(d).

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US: Because there appears to be no change of substance here, and since the tax in question is essentially the same as that previously agreed to and merely has a new name, we believe the Department will accept this proposal. *OK*

Article 14(2)

(Sixteenth Meeting)

US: With respect to Article 14(2), the Department is willing to accept the Japanese version of this Article subject to the inclusion of a clarifying sentence in the Article pertaining to the definition of the term "forming part of his household". The US desires that such clarification embody the thought expressed by Japan in the Ninth Meeting to the effect that "the Japanese draft would permit a daughter or son not residing with the parents, but elsewhere in the receiving state (such as in a boarding school) and supported by them, to receive the benefits of this Article but would withhold such benefits from a son or a daughter, as well as a parent, residing with the consular officer but working and receiving a salary substantially sufficient for self support."

Good thinking
Since our last meeting we have been studying this problem and find that reference to members of the family of a consular officer "forming part of his household" appears not only in Article 14(2) but also in the new Article on Limitations. It would furthermore be included in Article 11(5) if the recent Japanese proposal of an editing change in this sense is adopted. Therefore, since it has been proposed that this phrase appear in three different places in the Convention, and since the Department has indicated its agreement thereto in principle, in respect of Article 14(2), it would seem logical to us to place the suggested clarification either in Article 2 or in a new Protocol. *WST*

Japan: We agree in principle to your proposal and would suggest that an ad hoc committee (Messrs. Donowaki and Holland) draft an appropriate clarification for this purpose to be given ad referendum consideration at a later meeting of the full working groups.

US: We agree.

(Seventeenth Meeting)

Japan: With respect to the definition of the term "members of his family forming part of his household" as drafted by Messrs. Donowaki and Holland, we

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propose that the following phraseology be adopted: "The term 'members of his family forming part of his household' referred to in Articles 11(5), 14(2) and the new Article on Limitations will be understood to include only those persons residing in the receiving state who are substantially dependent upon the consular officer or employee for support." We further believe that this definition should be an appropriately numbered paragraph in the Protocol rather than be included in Article 2 of the Convention. Definitions appearing in the latter are Convention-wide in scope whereas definitions in the Protocol refer to specific articles in the Convention.

US: We will transmit this proposal to the Department. It would appear to us that this proposed new paragraph of the Protocol would make unnecessary the second sentence in Article 11(5).

Japan: Under Japanese immigration laws, foreigners who work have a special immigration status and are subject to the Alien Registration Law. In view of this new proposal, we would suggest that the second sentence of Article 11(5) be revised to read as follows: "Such members of the family of a consular officer or employee shall not receive the benefits of this paragraph if gainfully employed in the receiving state."

US: We wish to point out that in the proposed new paragraph of the Protocol, the reference to the new Article on Limitations will eventually have to be changed to cite the appropriate number for this Article.

Japan: Yes, that is correct.

Article 16(1)

(Sixteenth Meeting)

US: With respect to Article 16(1), the US agrees to Japan's proposal.

Article 17(1)(e)

(Seventeenth Meeting)

Japan: In Article 17(1)(e)(ii), we wish to substitute the term "depositions" for "evidence". The subparagraph would then read "take depositions, on behalf of the courts of the sending state, voluntarily given by, or".

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US: We wish to point out that this proposal would narrow the scope of the subparagraph, since "depositions" is a less inclusive term than "evidence", and we are uncertain at this time whether it would meet the needs of the United States. We will, of course, submit your proposal to the Department.

Japan: If the United States accepts this proposal, the first sentence of the Agreed Official Minute to Article 17(1)(e) could be deleted, as well as the word "also" near the beginning of the second sentence.

ACM to Article 17(1)(e)

(Sixteenth Meeting)

US: With respect to the Agreed Official Minute to Article 17(1)(e), the US desires further clarification as to the need for this ACM and also a further explanation of the reason for the change of "material" to "real" evidence.

Japan: We will attempt to meet your request at a later date. However, we have some preliminary thoughts which may be helpful. It has always been the intention of the Ministry of Justice to limit the evidence to be taken by consular officers to oral or written statements. Accordingly, if we use the term "take depositions" instead of "take evidence", the first part of the ACM may no longer be necessary. We may make a new proposal along this line.

US: The inclusion of the Agreed Official Minute to Article 17(1)(e) is contingent upon the clarification requested above.

(Seventeenth Meeting)

Japan: As to the justification for the remainder of the text in this ACM [see final comment by Japan under Article 17(1)(e) above], we should like to present the following explanation.

The Japanese side takes due note of the assurance given by the US side at the meeting held on August 2, 1961, to the effect that the term "courts of the sending state" used in paragraph (1)(e)(ii) of Article 17 may include, with respect to Japan, judges who act in accordance with Articles 179 and 226 of the Japanese Code of Criminal Procedure. However, if one is to apply this provision according to letters of the text alone, doubts may arise whether a consular officer is permitted to take depositions on behalf of judges (although under limited circumstances) of the sending state. Performance of consular functions of this kind (i.e., taking depositions on behalf of the courts of the sending state) relates to extraterritorial exercise of jurisdiction by the sending state and, accordingly, it is desirable to eliminate uncertainties by

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way of recording an understanding reached by both sides in the Protocol of the Convention, rather than in the history of discussion of the Convention.

The Japanese Government intends to introduce, upon entry into force of the Consular Convention, a bill amending the Code of Criminal Procedure in order to implement some of the provisions of the Convention. Accordingly, the provisions proposed by Japan will be of practical value for legislative purpose.

A judge who acts under the provisions of Articles 179 and 226 of the Code of Criminal Procedure of Japan has the same power as a court only prior to the commencement of official court proceedings, but he does not represent a court per se.

Of course, if the United States desires the deletion of subparagraph (b) of this AOM, we would have no objections. *where is it?* ?

Article 17(1)(g) - New Japanese Proposal

(Sixteenth Meeting)

OK
Japan: Our third proposal deals with the addition of a new subparagraph to Article 17(1) to become 17(1)(g) and to read as follows: "issue, with regard to goods, certificates of origin and other necessary documents for use in the sending state." While we do not have strong feelings about this proposal we believe its adoption would serve the interests of clarity.

Article 23(2)

(Sixteenth Meeting)

US: With respect to Article 23(2), the US agrees to the substance of the proposed new Japanese paragraph but for reasons of internal consistency and drafting, the Department would propose the following language in lieu of the Japanese paragraph:

"The provisions of the preceding paragraph shall not be construed as affecting the rights of vessels in innocent passage through the territorial sea. Such rights are determined by international law."

Japan: We accept the US proposal.

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Second Paragraph of the Protocol

(Fifteenth Meeting)

US: The United States cannot accept the concept advanced by Japan that Japanese consuls in the United States should be granted the right to represent Ryukyuans in the US. The US considers Ryukyuans to be persons under the protection of the US by virtue of its position as administering authority of the Ryukyu Islands. It would be undesirable for the United States to abdicate its protective responsibility while Ryukyuans are in the US. Practically speaking, in the rare cases where Ryukyuans have become involved in difficulties in the US, the Department of the Army, as administering authority for the Ryukyus, has been helpful in assisting these Ryukyuans by approaching on their behalf the local authorities concerned.

The US notes that the Consular Convention as presently drafted would permit American consular officers to represent and protect Ryukyuans in Japan since they are "persons under the protection of the United States." The US would be willing to eliminate this right in return for a similar elimination of Japanese rights to protect Ryukyuans in the United States. To solve this problem, the US would like to present a counterproposal for consideration by the Japanese side.

[At this point there was handed to the Japanese delegation the American counterproposal for Protocol 2 reading as follows:

"An individual whose place of family registration is in one of the areas set forth in Article 3 of the Treaty of Peace with Japan, signed at the City of San Francisco on September 8, 1951, shall, for so long as his place of family registration has not been transferred to Japanese jurisdiction, be considered a national of Japan when in Japan and a person under the protection of the United States when in the United States of America, its territories or possessions."/>

The US proposal makes no reference to specific areas--the Protocol would cover all areas referred to in Article 3 of the Treaty of Peace with Japan as was earlier indicated to be the desire of the Japanese side. The proposal, in effect, however, defines Ryukyuans as those Japanese nationals who have their place of family registration in the Ryukyus. It also provides that the special status of "Ryukyuan" shall cease for any individual when his place of family registration is transferred to Japanese jurisdiction, whether en masse as part of the return of all or part of the Ryukyu Islands to Japanese administration or by action of the individual family in transferring its place of family registration from the Ryukyus to Japan.

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It should be noted that this definition of "Ryukyuan", as well as the definition of the status of Ryukyans in the United States and Japan, is being proposed for the purposes of the Consular Convention only.

While unable to grant the legal right to protect Ryukyans in the United States to Japanese consular officers, the United States would not, for practical purposes, seek to interpose obstacles between Japanese consular officers and Ryukyans who might wish to consult them in the United States. We would similarly expect that Ryukyans in Japan would be free to consult US consular officers. Also the Embassy is authorized to have the negotiating record show that the Department's proposal is not intended to deny to Japanese consular officers in the US the right to perform services for Ryukyans when such services are related to Japanese passports or to such matters as the execution of documents intended to have legal effect in Japan and entitlement to relief and benefits receivable from Japan. The negotiating record would similarly be expected to show that Japan's acceptance of this proposal would not deny to US consular officers in Japan the right to perform comparable services for Ryukyans. It seems to us that this proposal meets the basic purposes of the Japanese side with respect to Protocol 2 as set forth in our previous discussions.

Japan: Would you have any objections to prefacing your proposal with the words "For the purpose of this Convention"?

US: While there is no specific instruction from the Department on this point, it seems clear to us that the definition of Ryukyans, as well as the definition of the status of Ryukyans in Japan and in the United States, is intended solely for this Consular Convention and that the history of the negotiating sessions would clearly show this to be so. A preface to the Department's proposal would therefore appear unnecessary.

Japan: Do you believe that there would be objections to the inclusion of an Agreed Official Minute to cover the explanation given by the US side on its proposal regarding the status of Ryukyans?

US: The inclusion of an Agreed Official Minute for this purpose would present difficulties to the US side, a principal one being the need for Senate ratification of the Agreed Official Minute along with the Consular Convention itself. You will recall that in our earlier meetings both sides reached agreement to eliminate Agreed Official Minutes from the Consular Convention.

Japan: Would a Ryukyuan in the US with a Japanese passport and no Ryukyuan Certificate of Identity be considered a person under the protection of the United States?

US: According to the Department's proposal, if the Ryukyuan in question had his place of family registration in a United States administered area of the Ryukyus he would be considered under the protection of the United States.

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Japan: What is the difference between a possession and a territory? Could you give us some examples?

US: American Samoa and Guam are possessions and Hawaii and Alaska before they became States were political subdivisions designated as Territories. The term possession connotes less political autonomy than does the term territory. Possessions and territories would be included in the general term "areas" as used in the Department's proposal. You will also note that Article 1 of the proposed Consular Convention defines territories to which the Convention applies as comprising all areas of land and water subject to the sovereignty or authority of either High Contracting Party. It does not appear to us that use of the term "territories or possessions", which is frequently found in US official documents, would interpose obstacles in the interpretation and application of the Convention in specific cases.

Japan: We will give your new proposal our urgent consideration.

(Sixteenth Meeting)

Japan: We have a counterproposal to present for Protocol 2. We desire the Protocol to read as follows: "Notwithstanding the provisions of paragraph 3 of Article 2, an individual whose place of family registration is in the Ryukyu Islands shall, for the purpose of this Convention and for so long as his place of family registration has not been transferred to Japanese jurisdiction, be considered a national of Japan when in Japan and a person under the protection of the United States when in the United States of America, its territories and possessions."

US: We recall that you earlier took the position that to facilitate Diet ratification of the Convention you required that Protocol 2 apply to all areas covered by Article 3 of the Treaty of Peace with Japan and we so informed the Department.

Japan: We are, of course, aware of this fact but further study of Protocol 2 revealed that certain difficulties would be encountered in explaining the registration status of people living in Ogasawara /Bonin Islands/ if our earlier draft were accepted. Whereas the family registration records of persons living in Ogasawara are kept in Tokyo, the place of registration noted on the records still remains as Ogasawara and as a result we feared that misunderstandings might develop in the future. We therefore concluded that it would be preferable to have the territorial application of Protocol 2 limited only to the Ryukyu Islands. We have prepared in draft an exchange of letters [copies of which were handed to the US side] between Mr. Ralph J. Blake, Counselor of the American

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Embassy, and Mr. Toru Nakagawa, Director of the Treaties Bureau, Ministry of Foreign Affairs, which records the explanation of the US position with respect to Protocol 2 given by Mr. Blake at the 15th Meeting on August 2, 1962. Although the official history of the Convention will reflect this explanation, there might be instances in which we would not desire to disclose the entire record of the Convention to the Diet. We furthermore do not intend to volunteer the disclosure of the exchange of letters unless this were to prove helpful in connection with the ratification process. The date appearing on these letters would be one shortly prior to the date of the signing of the Convention. 3

US: We will present your counterproposal and the draft exchange of letters to the Department.

Third Paragraph of the Protocol

(Sixteenth Meeting)

US: With respect to Protocol 3, the US would prefer to have reference made to Article 13(1) in the new Article on Limitations, with the subsequent deletion of Protocol 3.

Japan: If such a reference were made to Article 13(1) in the new Article on Limitations, would a consular officer or employee who is a dual national of Japan and the US be included? See it

US: Yes.

Japan: We would then have no objection to the proposal.

Fourth Paragraph of the Protocol - New Japanese Proposal

(Sixteenth Meeting)

Japan: Our fourth new proposal deals with Protocol 4. Japan proposes that the words "be deemed to refer to" in the preamble of this paragraph be replaced by the words "be deemed to include". If the present wording were allowed to stand it might be interpreted that the word "vessel" referred to in Articles 21(1), 22(1), 22(2), 22(3), 22(5), 23(1), and 23(3) applies only to such a vessel as is covered by Protocol 4(a) and (b) when in fact the original intention of this Protocol was that the term "vessel" have a broader meaning.

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ACM to Articles 14 and 17

(Sixteenth Meeting)

US: With respect to the ACM to Articles 14 and 17, as incorporated into Article 14(3), the US believes it desirable to frame this ACM in the terminology of Article 3, viz., "consular offices" instead of "consulates". It is therefore suggested that the wording "consulate's importation" be changed to "importation by consular offices".

Japan: We are agreeable to this proposal.

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